

**IN THE UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF OHIO**  
**WESTERN DIVISION**

**MASSIACH HAYWARD**  
83 Bishopsgate Dr.  
Cincinnati, OH 45211

Plaintiff,

vs.

**KANESHIA HOWELL**  
c/o City of Cincinnati  
301 Ezzard Charles Dr.  
Cincinnati, OH 45202  
*Individually and in her official capacity as an  
employee of the City of Cincinnati*

and

**CITY OF CINCINNATI, OH**  
801 Plum St.  
Cincinnati, OH 45202

and

**JOHN AND/OR MARY DOES 1-10**  
c/o City of Cincinnati  
301 Ezzard Charles Dr.  
Cincinnati, OH 45202  
*Individually and in both his or her official  
capacity as an employee of the City of  
Cincinnati*

Defendants.

Case No.:

Judge:

Complaint

**JURY DEMAND ENDORSED**

NOW COMES Plaintiff, Massiach Hayward, by and through his attorneys, and for his Complaint states as follows:

**JURISDICTION AND PARTIES**

1. This action is brought pursuant to Ohio statutes, and United States Constitution Amendments IV and XIV, 42 U.S.C. § 1983 and § 1988, respectively.

2. Plaintiff Massiach Hayward was a resident of Hamilton County, Ohio, at all times material to the subject incident.

3. Defendant Kaneshia Howell was at all times relevant to this action a law enforcement officer employed by the Cincinnati Police Department. Officer Howell is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. She is sued individually and in her official capacity as an employee of the City of Cincinnati.

4. Defendant City of Cincinnati, Ohio, is a political subdivision of the state of Ohio, organized and existing under the laws of the state of Ohio, and operating and conducting business in Hamilton County, Ohio. Cincinnati Division of Police is a subdivision of Defendant City of Cincinnati, Ohio. Upon information and belief, Defendant City of Cincinnati, Ohio Division of Police Officer Kaneshia Howell, and John is being sued in his individual capacity; to wit, Officer Howell was a resident of Hamilton County at the time of the incident.

5. Defendants John or Mary Doe are police officers, 9-1-1 operators, dispatchers, and others whose identity is not currently known; and being sued in both their individual and official capacities, are employees of the Defendant City of Columbus, Ohio; were, at all times material to this action, a ‘person’ under 42 U.S.C. §1983 and acted under color of law.

6. All of the events or omissions giving rise to this action occurred in Hamilton County, Ohio.

7. This is an action seeking damages in excess of seventy-five thousand dollars (\$75,000.00), exclusive of costs, interest, and attorney's fees.

### **FACTUAL ALLEGATIONS**

8. On October 20, 2018, Plaintiff Massiach Hayward was patronizing a bar in Cincinnati, Ohio.

9. After exiting the bar, Plaintiff observed a friend involved in an altercation with several people outside of the bar.

10. As Plaintiff attempted to de-escalate the altercation, an unknown officer approached Plaintiff and treated him as if he were the aggressor in the incident. Plaintiff complied with the officer's orders to disperse and left the location of the altercation.

11. A few moments later, Plaintiff attempted to speak with the unknown officer, who was accompanied by Defendant Howell. Defendant Howell told Plaintiff to "back the fuck up" as she and the unknown officers pulled their tasers out.

12. Plaintiff, who had his arms in the air while standing several feet away from the officer and while not exhibiting any behavior that merited the use of force, was then tased in the chest by Defendant Howell and the unknown officer.

13. Defendant Howell and the unknown officer then stood over Plaintiff, who was lying prone face down on the ground, and repeatedly shouted at him to put his hands behind his back.

14. Plaintiff expressed to the Defendants that he was physically unable to put his hands behind his back, and while not exhibiting any behavior warranting the use of force, Defendants again tased Plaintiff.

15. While the unknown officer attempted to cuff Plaintiff, Defendant Howell again tased Plaintiff for at least the third time.

16. Body worn camera video from Defendant officers provides clear evidence that Plaintiff did not pose a threat during Defendants' initial use of force.

17. Body worn camera video from Defendant officers provides clear evidence that Plaintiff did not pose a threat during each of Defendants' subsequent uses of force.

18. Officer Howell and the unknown officer knowingly did not comply with the City of Cincinnati Police Department's use of force policy which requires that officers must consider factors such as the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by fleeing. The use of a TASER is not warranted where an individual is simply fleeing, absent additional justification. There were no circumstances that would permit a reasonable officer to use the taser the first, second, third, or any subsequent time.

19. As a direct and proximate result of Defendants' actions, Plaintiff suffered severe pain, physical injuries, humiliation, embarrassment and emotional distress from the uses of force.

### **COUNT I**

#### **EXCESSIVE FORCE IN VIOLATION OF 42 U.S.C. § 1983 AMENDMENTS IV AND XIV**

20. Plaintiffs hereby incorporate paragraphs 1-19 as though fully set forth herein.

21. This is an action brought against Defendant City of Cincinnati Division of Police Officer Kaneshia Howell in her individual and official capacity, pursuant to the United States Constitution Amendments IV and XIV, in violation of 42 U.S.C. § 1983 and § 1988.

22. At all times material hereto, Defendant Kaneshia Howell was an employee and/or agent of Defendant City of Cincinnati, and acting within the course and scope of her employment with same, and acting under color of law, to wit, under color of the statutes, ordinances, regulations, policies, customs, and usages of Defendant City of Cincinnati.

23. Defendant Kaneshia Howell used unnecessary and excessive force, on the person of Plaintiff Massiach Hayward, depriving him of bodily integrity, liberty, and due process of law.

24. To wit, Defendant Kaneshia Howell and Defendant John Doe used their tasers to strike Plaintiff repeatedly. The use of force exhibited by Defendants against Plaintiff Massiach Hayward was unreasonable and clearly excessive.

25. The conduct of Defendant Kaneshia Howell and Defendant John Doe, acting in concert and under color of law, directing force toward Plaintiff was done intentionally, willfully, maliciously, with a deliberate indifference and/or with a reckless disregard for the natural and probable cause of their acts, was done without lawful justification or reason, and was designed to and did cause specific and serious physical and emotional pain and suffering in violation of Plaintiff's civil rights.

26. As a direct and proximate result of said Defendants acts, omissions, and clear use of excessive force, Defendants deprived Plaintiff Massiach Hayward of the right to

unreasonable seizure and due process of law guaranteed to her by the Fourth and Fourteenth Amendments of the United States Constitution.

27. Plaintiff Massiach Hayward has ongoing and continuous mental and physical damages, and as such is entitled to recovery, including but not limited to the following:

- (a) Compensation for physical and emotional harm;
- (b) Loss of earnings and net accumulations;
- (c) Past medical bills and expenses;
- (d) Conscious pain and suffering;
- (e) Punitive damages;
- (f) Award reasonable attorneys' fees and costs to Plaintiff on Federal 1983 Counts;
- (g) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff Massiach Hayward demands damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

## **COUNT II**

### **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS OF PLAINTIFF MASSIACH HAYWARD**

28. Plaintiff hereby incorporate paragraphs 1-27 as though fully set forth herein.

29. This is an action brought against Defendant City of Cincinnati Officer Defendant Kaneshia Howell individually and in her official capacities based upon the intentional infliction of emotional distress.

30. At all times material hereto, Defendant Kaneshia Howell was an employee and/or agents of Defendant City of Cincinnati, acting within the course and scope of her employment

with same, and in furtherance of the interest of Defendant City of Cincinnati, and with Defendant City of Cincinnati's consent.

31. Defendant Kaneshia Howell owed a duty to Plaintiff Massiach Hayward to act in a reasonable and prudent manner. Defendant Kaneshia Howell breached said duty by engaging in extreme, outrageous, and/or, reckless conduct when she directed excessive, unreasonable and unjustified force towards Plaintiff. Defendant Kaneshia Howell knew or should have known that her actions would cause severe physical and psychological damages.

32. Defendant Kaneshia Howell' outrageous, extreme, and reckless actions and inactions, actually and proximately exposed Plaintiff Massiach Hayward to real physical peril and psychological trauma, resulting in physical damages and permanent and ongoing psychological damages.

33. Plaintiff Massiach Hayward has permanent and ongoing damages as a result of said incident and as such is entitled to recovery, including but not limited to the following:

- (a) Compensatory damages for psychological harm;
- (b) Mental pain and suffering;
- (c) Any and all other and further relief as this Court may deem appropriate.

WHEREFORE, Plaintiff Massiach Hayward demands damages in an amount in excess of SEVENTY- FIVE THOUSAND DOLLARS (\$75,000.00), together with post judgment interest and costs.

Respectfully submitted,

/s/ Sean L. Walton

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**JURY DEMAND**

Plaintiff hereby requests a jury to hear all issues so triable.

/s/ Sean L. Walton

Sean L. Walton (0088401)